HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 16730 of 2004

Between:

1. Suryapet Rice Millers Association, Jammigadda, Suryapet, Nalgonda District, rep. Through its President, Morisetty Satyanarayana and two others.

..... PETITIONERS

AND

1 The Commissioner & Director of Marketing, Government ofAndhra Pradesh, Hyderabad and two others.

.....RESPONDENTS

HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 7621 of 2005

Between:

The Jangaon Chamber of Commerce, a society registered with Regn. No.925 of 1974 at old beet Bazar, Jangaon, Warangal District rep. By its President, Pokala Lingaiah s/o Chandraiah aged 54 years r/o Jangaon, Warangal District.

..... PETITIONER

AND

1 The Commissioner & Director of Marketing, Government ofAndhra Pradesh, Hyderabad and another.

.....RESPONDENTS

O R D E R:

W.P.No.16730 of 2004

The only question that arises for consideration in this writ petition is as to whether the amendment to Bye-law No.35,

Annexure-IV of the Agricultural Market Committee, Suryapet, Nalgonda District, published previously in Andhra Pradesh Gazette No.14 (Rules Supplement to Part II) dated 28.06.2001 in respect of the enhancement of market charges payable by the purchaser under Rule 73 of the Andhra Pradesh (Agricultural Produce and Livestock) Market Rules, 1969 (for short 'the Rules"), is valid under law and whether the same is made as per Sub-Section (1) of Section 34 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966, as amended by Act 1 of 1971, (for short 'the Act') or not.

It seems by the impugned Gazette Publication, Rules supplement published were purported to be in

exercise of the powers conferred under Sub-Section (1) of Section 34 of the Act. The Director of Marketing approved the amendment to bye-law No.35, Annexure IV of all the Agricultural Market Committees in the State in respect of the market charges under Rule 73 of the Rules and it reads thus:

> "…Commission charges, that portion of the Hamali charges for the express function of unloading the produce from bullock cart, tractor, truck or lorry and cleaning charges, if done, before sale, prescribed in Annexure IV under the bye law alone are payable by the sellers of such notified products. All other market charges prescribed in the said Annexure IV are payable by the purchasers"."

Thereafter, being not satisfied with the existing procedure, the Market Committee after deliberations has adopted the same by way of a resolution of the Managing Committee on 07-02-2004 and the same was published in the Rules Supplement to Part II of the Andhra Pradesh Gazzette on 24.06.2004. The substance of the amendment to the bye-laws is the enhancement of the rates as well as shifting the burden for paying the rate from seller to the purchaser.

The learned counsel for the petitioners strenuously contended that in view of the impugned Gazette Publication amending Bye-law No.35, the Market Committee, Suryapet has no option except to adopt the

same as it is and pass a resolution on 07-02-2004, making amendments to the bye-laws, enhancing the rates as well as shifting the payment of rates from seller to the purchaser. The learned counsel submitted that the said procedure adopted is contrary to law and nothing has been left to the Market committee, Suryapet to decide on its own as the bye-laws were already amended and the Market Committee has adopted the same in view of the said amendment. May be, it was approved thereafter on 24.06.2004, but the Market Committee has not exercised its mind and has not decided as to under what circumstances the enhancement of the rates are necessary and why the burden should be shifted to pay the rate from seller to the buyer. Insofar as the amendment is concerned, in order to show that the said amendment to the bye-laws is illegal, the learned counsel for the petitioners placed strong reliance on a reported Judgment in

M/s. Godavari Trading Company, Palakol and another Vs. Agricultural Market Committee, Palakol and others [1] and drawn attention of this Court to paragraphs 15 and 16 of the said Judgment, and it reads as under :

> "Mr.Venkateswara Rao, learned standing counsel for the Market Committees, however, contended that the method adopted by the Director of Marketing initiating the proposal to amend the bye-law and requiring the market committees to indicate their acceptance and making it clear to them that in the

absence of any reply within the stipulated time, it would be deemed that they have approved, the proposed amendment, constitutes sufficient compliance of section 34 and that is authorized by the proviso to sub-section (1) of section 34. This, in our view, is a misreading of the scope of the proviso to sub-section (1) of section 34. That proviso relates to the framing of bye-laws for the first time after the constitution of the market committees. If the market committees fail to make bye-laws under sub-section (1) of Section (1) of Section 34 within two months from the date of their constitution under that proviso, the Director of Marketing is empowered to make such bye-laws as he thinks fit, and the bye-laws so made shall remain in operation until the market committees themselves make bye-laws under this sub-section. This proviso does not deal with the power of the Director to frame bye-laws for the market committee which has already framed its bye-laws after it was first constituted. In other words, after bye-laws are framed by a market committee, any amendment or substitution of a bye-law is not covered by this proviso. The power under this proviso is obviously intended to meet a situation where a market committee fails to make bye-laws required of it without which it cannot function. To enable it to function, the Director is empowered to make bye-laws for the transitory period. The bye-laws so framed under the proviso would remaining force only until such time as the market committee itself frames bye-laws under the main sub-section (1) of Section 34. The Act nowhere envisages initiative being taken by the Director of the Market Committees to amend the bye-laws already framed and in force. Even if the Director of Marketing were to suggest amendment of the bye-laws, still the bye-law could be framed only by way of a resolution adopted by the market committees. Any letter, such as the one issued by the Director of Marketing, cannot be a substitute for

the exercise of the power by the market committee. The director of Marketing has no jurisdiction under the Act, to usurp to power of the market committees, to impose a by-law on the Market Committees; no bye-law can be framed otherwise than in accordance with Section 34 even by the market committees. In **Minerva Talkies Vs. State of Andhra Pradesh** [2] this Court dealing with a case under Section 81 of the Andhra Pradesh Municipalities Act, which required previous sanction of the Government for the imposition of any tax on advertisement held that that requirement was not satisfied, where the initiative was not taken by the Municipality though sanction was accorded by the Government before the tax was imposed.

16. So is the view taken by a Bench of this Court in **Sri Vijaya Cotton Traders Vs. State** [3]. It was a case specifically arising under the act with which we are presently dealing. The previous sanction envisaged by sub-section (1) of section 34, cannot be deemed to have been satisfied by the initiative taken by the Director of Marketing in suggesting the amendment through his letter dated 23-4-1974. However, if the market committees themselves have either *suo motu* or pursuant to the letter of the Director of Marketing have passed resolutions adopting the bye-law as suggested by the Director of Marketing by the requisite majority, that bye-law would undoubtedly be valid by-law and such bye-law may, by way of amendment or substitution of the previous bye-law may, by way of amendment or substitution of the previous bye-law, have the same force as any other bye-law framed by them on their on initiative. It is, therefore, necessary to examine whether all or any of the market committees have passed such resolutions adopting the bye-law suggested by the Director of Marketing."

It is further submitted that unless and until the Market Committee itself has passed a resolution feeling the necessity of such enhancement of the rates as well as shifting the burden from seller to the purchaser, the present amendment of the bye-laws is arbitrary and illegal and colourable exercise of power. Nonetheless the impugned Gazettee notification is without any authority of law.

The learned Government Pleader appearing on behalf of the respondent Nos.1 and 2 strenuously contended that the Director of Marketing by way of the Gazette Publication dated 28-06-2001 only suggested the amendment and further to complete the legal formalities, and in that direction, a resolution was passed by the committee on 07-02-2004 after deliberations and decided that the rates be enhanced and the burden be shifted as to payment of rates from seller to the purchaser. Therefore, there is no illegality committed either by the Director of Marketing as well as the Marketing Committee, Suryapet. Hence the writ petition is imaginary, speculative and is liable to be dismissed.

Mr. V.V.Narayana Rao appearing on behalf of the 3rd respondent-Market Committee, Suryapet has placed the resolution passed by the society on 07-02-2004, wherein the subject matter is as to the enhancement of

rates of Hamali weighing and commission charges to be paid by the ryot etc. In this regard, as many as 11 members including the Chairman of the Society were present in the said meeting held on 07.02.2004 and they resolved to enhance the rate of charges for Hamali weighing etc., and also shifting of the rates to be calculated from the seller to the purchaser. The same has been approved by the Director of Marketing in exercise of the powers conferred on him under Sub-Section (1) of Section 34 of the Act and it existed in the Rules Supplement to part II of the Gazette Publication No.26 dated 24-06-2004. In view of the above discussion, it cannot be accepted that the resolution passed by the Market Committee on 07-02-2004, as approved by the Director of Marketing and published in the Gazette Publication No.26 dated 24-06-2004, is just a formality and not according to law.

May be on 28-06-2001 at state level, they thought that there should be unanimous amendment to the bye-laws and therefore, suggested certain Supplementary Rules of amendment by Gazette publication No.14 dated 28-06-2001. But, thereafter, as noticed above, the committee has deliberated and passed a resolution on 07.02.2004 and the same was approved and published in the Gazette No. 26 dated 24.06.2006 as contemplated under Section 34(1) of the Act. In view of the above, the

impugned Gazette Notification No.14 dated 28.06.2001 published in the A.P. Gazette purported to be in exercise of the powers conferred under the Act as amended by Act 1 of 1971 by the Director of Marketing shall be treated redundant. Insofar as the Gazettee publication dated 24-06-2004 approving the resolution passed by the Market Committee on 07.02.2004 is upheld, since the same is valid and the procedure laid down under the Act and the Rules have been followed in its strict sense.

Accordingly, the writ petition is disposed of. No costs.

W.P.No. 7621 of 2005

For the very same reasons stated above, this writ petition is also disposed of in terms of W.P.No.16730 of 2004. No costs.

28-07-2006

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[1] 1984(1) ALT 221

[2] 1972(1) An. WR 216

[3] AIR 1981 A.P.203